

## 1. General Terms and Conditions

1.1 In these terms and conditions,

1.1.1 "Goods" means the goods specified in the Seller's order confirmation or if no order confirmation is issued, the Seller's tender / quotation

1.1.2 "Services" means the services specified in the Seller's order confirmation or if no order confirmation is issued, the Seller's tender / quotation

1.1.3 The "Buyer" means the person who accepts a tender / quotation of the Seller for the sale of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Seller

1.1.4 References to "we", "us", "our", or the "Seller" means ARBURG Sdn Bhd (RoC No. 199 10101 3533 (223845D))

1.1.5 "Business Day" means any day other than a Saturday, Sunday, or public holiday in Malaysia, on which commercial banks are not authorised or required to close in Malaysia

1.1.6 "Incoterms 2010" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force in 2010. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms 2010 shall have the same meaning in these terms and conditions, but if there is any conflict between the provisions of Incoterms 2010 and these terms and conditions, the latter shall prevail.

1.2 All Goods and/or Services shall be supplied on the basis of our terms and conditions of sale and delivery below; the following terms and conditions shall also govern repairs to and commissioning of the Goods and/or Services, even if no specific reference is made to them in individual cases. Their application may only be excluded, in full or in part, in individual business transactions by express agreement. Any special arrangements which exclude or contradict our general terms and conditions of business, in full or in part, shall only be valid if they have been confirmed in writing by us. If the Buyer does not raise any objection to our order confirmation within one working week of receipt of same, it shall be assumed that our terms and conditions of sale and delivery shall apply in their entirety and unconditionally. The Buyer's general terms and conditions of contract and business, in particular terms and conditions of purchase, shall not apply to the Goods and/or Services without our express acknowledgement. We shall not be bound by them either if we do not specifically object to them in any individual case. Acceptance of the Goods and/or Services by the Buyer shall, in any event, include unconditional acknowledgement of our terms and conditions of sale and delivery, as well as the waiving of any terms and conditions which the Buyer may include on their forms. The same condition shall apply when the Buyer makes a down-payment and the first payment.

## 2. Order acceptance, performance data

2.1 Our tenders are non-binding at all times. Orders shall only be deemed to apply in the specified scope with our written confirmation unless we have agreed otherwise in individual cases. Orders shall be accepted, at our discretion, within four weeks through the submission of an order confirmation or through the unconditional provision of the ordered goods and/or services.

2.2 Our order confirmation only extends to the provision of goods and/or services in the country of destination, unless otherwise expressly agreed. We shall reserve the right to rescind the contract with immediate effect if it comes to our attention that the Buyer

and/or, with their permission, third parties intend to export the Goods and/or Services to countries outside the country of destination without our prior written consent.

2.3 Performance specifications for the Goods and/or Services shall only be binding upon us where this is shown in a current brochure or has been expressly confirmed in writing by us. We reserve the right to make design changes which we feel are appropriate on the basis of technical progress or at our discretion. If any such changes are made, we shall be entitled to apply any price increases which this may entail.

## 3. Prices, terms and conditions of payment, default in payment

3.1 Our sales prices shall apply ex-works exclusive of packaging, shipping and insurance costs. The prices for our products are based on the cost factors prevailing when the contract is concluded. We reserve the right, by giving notice to the Buyer at any time within 1 month after the date of delivery of all the Goods and/or Services, to increase the price of the Goods and/or Services to reflect any increase in the cost to us which is due to any factor beyond our control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give us adequate information or instructions.

3.2 If, following conclusion of the contract, we perform a special promotion at special rates, these special rates shall have no bearing on current contracts which have been established at normal list prices. Special promotional prices shall only apply to contracts which are expressly concluded within the scope of the special promotion and which have been confirmed as such by us.

3.3 Unless otherwise agreed in any individual case, payments for the Goods and/or Services shall be due on the following schedule:

3.3.1 30% of the price net when the order is placed,

3.3.2 60% of the price net when we announce that the Goods and/or Services are ready to ship,

3.3.3 10% of the price net 30 days after the date of invoice.

3.3.4 In the case of individual sales of accessories and spare parts, the entire invoiced amount shall be payable net as soon as the Goods and/or Services have been delivered. All invoices for repairs and installation work shall be payable net upon issue.

3.3.5 The price is exclusive of SST (if applicable) which the Buyer shall be additionally liable to pay to the Seller.

3.4 If payment terms are exceeded or in the event of payment default, we shall charge interest at a rate of 8% above the current Malaysia Overnight Rate (MYOR) applied by Bank Negara Malaysia unless higher rates of interest are agreed. We shall reserve the right to assert claims for further default damages. We shall be entitled to offset incoming payments against older debts first of all, then against costs and interest attaching to the main service and, finally, against the main account receivable. The Buyer may only offset costs or withhold payments if its counter claims are established by a court of law, are not disputed or are expressly acknowledged. The right to withhold payment shall also only apply if the counter claim which is being asserted is based on the same contract as our own claim.

3.5 If the Buyer fails to settle invoices which are due or exceeds the payment terms which have been granted to it, or if the Buyer's financial circumstances deteriorate following the conclusion of the contract, or if information pertaining to the Buyer comes to our attention following the conclusion of the contract which puts into question their solvency or creditworthiness, we shall reserve the right to request payment of the rest of the Buyer's debt immediately and, changing the agreements that have been made, request payment on account or the payment of a deposit or, if delivery has been effected, payment of all sums owing to us which are based on the same contract. This shall apply, in particular, if the Buyer fails to keep up its payments, if cheques issued by the Buyer are not honoured, if bills of exchange issued by the Buyer are not paid by it, if bankruptcy or winding up proceedings are instituted against the Buyer (as the case may be) or if an application for bankruptcy or winding up proceedings is filed but proceedings are not opened as there are insufficient assets to cover the costs of the proceedings.

3.6 Bills of exchange or cheques may only be tendered with our permission; this shall be done by way of conditional payment.

3.7 The Seller shall have the right to invoice for any amount required to be paid by the Buyer in the agreed currency in the order confirmation or in Malaysian Ringgit on the basis of the currency exchange mid-rate between the agreed currency and Malaysian Ringgit as published by the Bank Negara Malaysia at the close of business on the Business Day immediately prior to the date of the invoice.

#### **4. Delivery and performance time, delayed performance, partial delivery**

4.1 We shall make every effort to comply with the time limits and deadlines stated in the order confirmation. However, our details shall not be binding unless a fixed deadline for delivery (fixed transaction) is expressly agreed in writing. Specially agreed lead times shall commence when we send out our order confirmation, albeit not before receipt of the first instalment in accordance with no. 3.3. Deadlines shall be deemed to have been complied with if the goods being delivered have been handed over to the carrier or if we have notified the Buyer that the Goods and/or Services are ready to ship by the time the deadline expires. If we fail to meet a delivery deadline which has been agreed in writing, we shall only go into default following the expiry of a reasonable extension to the deadline granted in writing by the ordering party.

4.2 Compliance with deadlines for performance shall be contingent upon the Buyer supplying all the test objects, documentation, requisite permits and approvals, in particular plans on time, as well as compliance with the agreed terms and conditions of payment and other contractual duties, such as the Buyer's duties to cooperate. If these preconditions are not met on time, the deadlines shall be extended accordingly.

4.3 Agreed delivery and performance dates extend, even within the default, in the event of force majeure, especially natural disasters, epidemics, pandemics, war, terrorism, sovereign interventions, industrial disputes or similar cases beyond our control that occur without our fault, for the duration of the aforementioned event or its effects. The same applies if these circumstances occur with pre-suppliers, suppliers, carriers or subcontractors. ARBURG will communicate the beginning and end of such impediments to the customer as soon as possible. If the impediment continues for more than three months, or if it is certain that it will continue for more

than three months, both the customer and ARBURG can withdraw from the agreement. In this case, the customer is not entitled to raise claim for damages

4.4 We shall reserve the right to supply Goods and/or Services in batches within the agreed delivery and performance times, provided this is reasonable for the Buyer.

#### **5. Shipping, transport & packaging, transfer of risk**

5.1 Our Goods and/or Services shall always be shipped ex-works, provided nothing to the contrary has been expressly agreed with the Buyer in writing. Delivery of Good and/or Services shall be done according to Incoterms 2010.

5.2 All transport, unloading of the Goods and/or Services, transfer to production site, and assembly of the Goods and/or Services shall take place at the expense and risk of the Buyer provided nothing to the contrary has been agreed.

5.3 The price risk and risk of loss and accidental deterioration of the Goods and/or Services being delivered shall pass over to the Buyer once they have been made ready for collection and once the Buyer has been advised that the Goods and/or Services are ready. Otherwise, the price risk and risk of loss and accidental deterioration of the contractual objects being delivered shall pass over to the Buyer once the goods have been handed over to the carrier. Where the Buyer wrongfully fails to take delivery, the price risk and risk of loss and accidental deterioration of the Goods and/or Services being delivered shall pass over to the Buyer once we have tendered delivery of the Goods and/or Services and the Buyer shall bear the cost of storage of the Goods and/or Services, additional transport charges to store the Goods and/or Services and any other incidental charges.

5.4 Unless we receive written shipping instructions to the contrary from the Buyer, shipping shall be effected at the best of our discretion by the most favourable means of carriage, although we shall not be under any obligation to do so. If shipping is delayed due to circumstances which are attributable to the firm placing the order, risk shall pass over to that party from the date on which the Goods and/or Services are ready to ship.

5.5 At the Buyer's request and expense, we shall insure the consignment against theft, breakage, transport, fire and water damage, as well as against any other insurable risks. Otherwise, upon passing of risk to the Buyer as set out in no. 5.3 and 5.4, the Buyer is to insure the Goods and/or Services.

5.6 We shall be under no obligation to take back disposable packaging. In any event, cardboard boxes and polystyrene packaging shall count as disposable packaging.

#### **6. Assuring retention of title**

6.1 Notwithstanding delivery and passing of risks in the Goods and/or Services, we shall retain title to the Goods and/or Services until such time as all amounts owing to us have been settled in full, relating to the sale of the Goods and/or Services in this contract and all other goods and/or services sold by us to the Buyer, in particular including the accounts receivable on balance arising from the business links with the Buyer and accounts receivable established unilaterally by the administrator in the course of the choice of form of fulfilment. This shall also apply to conditional accounts receivable which arise in the future. Title shall only pass over to the Buyer, only upon we receiving all the payment due to us from the Buyer, in particular, if and insofar as we are released from any of the liabilities attaching to the Buyer which we have entered into in

the interests of the Buyer, in particular in the application of bill of exchange/cheque procedures.

6.2 Until the title passes to the Buyer, the Buyer shall hold the Goods and/or Services as our fiduciary agent and bailee, and the Buyer shall keep the Goods and/or Services separate from other goods belonging to the Buyer or other parties and shall undertake to treat the Goods and/or Services with care; it shall undertake, in particular, to arrange adequate new-for-old insurance for these at its own expense against loss, damage and destruction, such as against damage caused by fire, water and theft. The Buyer shall hereby assign its claims arising from the insurance policies to us at this stage, namely a first-class instalment amounting to the purchase-price claim for the Goods and/or Services on condition of reservation of title. We shall accept this assignment of claims.

6.3 The Buyer shall neither pledge the Goods and/or Services to which we retain title, nor transfer the same or any part of the Goods and/or Services as security. Under no circumstances may the Buyer resell the Goods and/or Services to which we retain title. However, we shall reserve the right to permit a resale if the Buyer provides us with the name of its buyer before the contract is concluded and the Goods and/or Services is handed over and to assign its purchase-price claim to us in line with the amount still owing to us as per the current account. We shall hereby accept this assignment of claims. However, our consent to the resale shall always be conditional upon the Buyer's contract partner signing the declaration of assignment and hereby stating that it has knowledge of the assignment and may only effect payment to the Seller, thereby discharging Buyer's debt. The resale shall be prohibited in any event if the Buyer effectively assigns or pledges a third party the sum owed to it by its contractual partner out of the resale beforehand or has agreed with it to prohibit assignment.

6.4 If bankruptcy, winding up or settlement proceedings occur, the Buyer shall undertake to advise any third party of the fact that we hold the title to the Goods and/or Services prior to the institution of proceedings by means of labelling or by any other expedient means.

6.5 Whilst we retain any claim upon the Goods and/or Services, we shall be entitled to ask the Buyer for information in respect of which of the Goods and/or Services, to which we retain title, are still in its possession and where they are located. We shall also reserve the right to inspect the Goods and/or Services there at any time and to collect them from there. We shall also be entitled to require the Buyer to deliver up the Goods and/or Services to us.

6.6 If the Goods and/or Services are seized or interfered with in any other way by third parties, the Buyer shall undertake to notify us accordingly in writing forthwith so that we can take legal action against the third party.

6.7 The processing, reworking or reshaping of goods supplied by us, subject to our retention of title, by the Buyer shall always take place in such a way that we incur no liabilities as a result.

6.8 We shall undertake to release the securities owing to us, at the Buyer's request, if the realisable value of our securities exceeds our accounts receivable against the Buyer by more than 10%; it shall be up to us to choose which securities to release.

6.9 In the event of breach or non-compliance with the obligations on the part of the Buyer in clauses 6.2, 6.3, 6.4, 6.5 or 6.6, all moneys owing by the Buyer to the company shall immediately become due and payable.

## **7. Warranty**

7.1 We grant a 12-months warranty on new machinery/equipment and a 6-months warranty on new spare parts. In the case of used goods, the warranty shall last 3 months. The periods of warranty shall commence on the day that the goods are delivered. The foregoing conditions shall not apply in cases where longer warranties are stipulated by law.

7.2 Our warranty shall be restricted to design, production and material defects, excluding warranty for wearing parts such as relays, heating strips, fuses, seals, filters, all parts of the plasticizing-unit and other parts which are particularly prone to wear. In case of different contractual agreement, whereby full warranty is guaranteed, the labour cost for replacing warranty parts is chargeable.

7.3 Our warranty shall be conditional upon defects being reported within 8 days of their appearance. This, however, shall not exempt the Buyer from its duties to inspect the Goods and/or Services immediately for defects and/or for discrepancies of any kind in terms of type and quantity and, where a defect exists or there has been an error in the delivery, to report this forthwith. The date on which we receive this complaint shall determine whether it is received on time. If complaints are submitted late, entitlements under warranty shall be ruled out, regardless of the grounds for the claim.

7.4 If substantiated complaints are submitted on time, we shall remedy the problem under warranty by either repairing the part or delivering a new part on workdays at our discretion. The Buyer shall grant us sufficient opportunity to repair the defective part or deliver a replacement. If a replacement is supplied, the Buyer shall undertake to return the defective object. Under no circumstances may the Buyer reduce the purchase price or rescind the contract unless the law prescribes otherwise.

7.5 The Buyer shall undertake to permit no-one other than us to rectify any defects which occur within the period of warranty. If it omits to do so and rectifies any defects itself or arranges for third parties to do so, its warranty entitlements shall be invalidated. The Buyer shall be required to pay for any costs incurred through its attempts to carry out any such repairs.

7.6 We shall accept no liability whatsoever for indirect damages, consequential damages resulting from defects, default damages or for damages resulting from the violation of legal goods by third parties. This, however, shall not apply in cases where compulsory liability is accepted in respect of wilful malice, gross negligence or due to death, physical injury or harm to health. This shall also apply where culpability rests with legal representatives or vicarious agents, as well as in the case of culpability in contractual negotiations.

7.7 Neither the complaint nor warranty-related actions (defect assessment, repair, delivery of a replacement) shall hinder the expiry of the period of limitation on warranty claims or cause the period of limitation to start anew. If parts are repaired or replacements supplied, or if spare parts are replaced for repair purposes, this shall not set separate new periods of warranty or limitation in motion.

7.8 No liability shall be assumed for damage arising for the following reasons: unsuitable or inappropriate use, defective installation or commissioning by the Buyer or a third party, natural wear and tear, defective or negligent treatment or handling, defective maintenance, failure to comply with the requirements in the operating manual, unsuitable operating equipment and resources, use of substitute materials and failure to only use original parts, defective building work, unsuitable subsoil, chemical, electrochemical or electrical interference unless responsibility for this rests with the Seller.

7.9 The Buyer shall pay additional warranty costs resulting from the fact that it wishes to have our products exported abroad or to a country other than the one confirmed by us for delivery.

7.10 The Goods and/or Services conform to the safety regulations which are generally applicable at the time of delivery. Amendments to safety regulations and the resulting costs for upgrades during the service life of the Goods and/or Services shall be borne by the Buyer and fall within its responsibility. If the Buyer purchases the Goods and/or Services and has it exported, it shall undertake to adapt the Goods and/or Services to comply with the safety requirements in the country where it is being commissioned, to advise its customers immediately of the relevant safety-related requirements, to make users aware of revisions in the operating manual, safety regulations and capabilities during the operating life of the Goods and/or Services, and to upgrade the Goods and/or Services in line with changing safety precautions. In the event that the violation of any of these obligations could prompt a third party to assert a claim for compensation, the Buyer shall thus indemnify the Seller from any such claims and resulting costs, and also reimburse the Seller forthwith for any costs and losses sustained through any such violation.

## **8. Liability, onus of proof**

8.1 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Conditions.

8.2 The Seller shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.2.1 Act of God, explosion, flood, tempest, fire or accident;

8.2.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.2.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.2.4 import or export regulations or embargoes;

8.2.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.2.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.2.7 power failure or breakdown in machinery.

8.3 In any event, the liability of the Seller to the Buyer in respect of any breach of contract shall be limited to the least of: (1) MYR 30,000.00 or (2) 10% of the purchase price of the Goods and/or Services. By special agreement in writing, and on payment of additional charges, higher compensation may be claimed from the

Seller not exceeding the purchase price of the Goods and/or Services or the agreed value, whichever is the lesser.

8.4 Under no circumstances shall we assume liability for compensation in excess of the level specified in the clauses above, regardless of the legal nature of the claim being asserted.

8.5 If the Buyer has justified claims for compensation in accordance with this article, they shall expire within one year of the statutory start of the period of limitation provided that a longer period of limitation is not required by law.

8.6 In the case of equipment such as step-up aids for loading materials manually and auxiliary equipment of any kind for setting up, servicing, repairing or operating the machine which is not included in the scope of delivery, the Seller shall assume no liability whatsoever during the use and/or non-use of the above equipment and for the resulting consequences sustained by the user.

8.7 The above provision has nothing to do with a change in the onus of proof to the disadvantage of the Buyer.

## **9. Rescinding the contract**

9.1 Orders shall be accepted subject to the creditworthiness of the Buyer. This is a basis for business. Notwithstanding the provisions contained in no. 3.5. above, we shall reserve the right to rescind the contract if the Buyer

9.1.1 submits false details on matters relating to its creditworthiness, or

9.1.2 makes any voluntary arrangement with its creditors; or

9.1.3 becomes the subject of an application for bankruptcy or winding up; or

9.1.4 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.5 the Buyer ceases, or threatens to cease, payment or to carry on business; or

9.1.6 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly, we shall reserve the right to rescind the contract. A creditworthiness check which reveals information which suggests that the Buyer shall not be able to keep up regular payments or information provided to us by a credit agency or bank shall count as conclusive proof of the existence of these circumstances. In the event of a dispute, submission of this information to a mediator to be appointed by us shall serve as adequate proof; the mediator shall treat the name of the credit agency or bank as confidential. If Goods and/or Services that have been ordered is not accepted for any reason or if we rescind the contract due to the possibilities available to us, the Buyer shall be required to pay us flat-rate compensation of 15% of the value of the order, although we shall reserve the right to request a higher level of compensation as well against presentation of corresponding evidence.

## **10. Place of performance, place of jurisdiction & applicable law**

10.1 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Asian International Arbitration Centre (AIAC) in accordance with the Arbitration Rules of the Asian International Arbitration Centre ("AIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be Kuala Lumpur.

The Tribunal shall consist of 1 arbitrator.

The language of the arbitration shall be English.

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by AIAC and may be made a consent award on agreed terms.

10.2 All legal disputes between the Buyer and us shall be governed exclusively by the law of Malaysia. The application of regulations governing the international sale of goods (CISG; UN purchase law) shall be expressly excluded.

#### **11. Storage of data**

We shall notify the Buyer that, where necessary for business purposes and permissible within the scope of statutory regulations, personal data shall be stored and processed by us on computer.

#### **12. Confidentiality**

The Buyer shall undertake to treat the Seller's know-how, as well as any of our other business and trade secrets, including the contents of the contract with the Buyer, as strictly confidential. The Buyer shall take all the reasonable precautions necessary to safeguard the aforementioned information against unauthorised access, unauthorised publication, duplication, circulation and other unauthorised use. The obligations specified in this article shall also extend over and beyond the end of this contract.

#### **13. Other provisions**

13.1 Our written correspondence shall be deemed to have been received by the Buyer if it is sent to the last-known address which we have for them. It shall be presumed that correspondence has been sent if we are in possession of a signed copy.

13.2 Ancillary verbal agreements shall only be valid if they are confirmed by us in writing. This shall also apply to any change in this provision.

#### **14. Separability clause**

If any of the above terms and conditions are or become invalid or impracticable, the validity of the other terms shall be thereby unaffected. In this event, the invalid or impracticable provision shall be replaced by a provision which is valid and practicable and which is most in keeping with the objectives of the original provision. The same condition shall apply to the completion of any loopholes in the contract.